

ACTION ITEM

Delta Plan Amendments: Final Program Environmental Impact Report Certification and Plan Amendment Adoption

Summary: For the past several years, Delta Stewardship Council (Council) staff has been preparing proposals for Delta Plan Amendments addressing three topics: the Delta Levees Investment and Risk Reduction Strategy (DLIS Amendment); Conveyance, Storage, and the Operations of Both (CSO Amendment); and Performance Measures (PM Amendment). These amendments constitute a project under the California Environmental Quality Act (CEQA), and the Council has determined that a Program Environmental Impact Report (PEIR) should be prepared for the amendments. Council staff completed preparation of and circulated the Draft PEIR for public and agency comment, and has prepared responses to comments and text revisions. Together, the Draft PEIR, the Final PEIR containing responses to comments and text revisions, and all appendices, constitute the PEIR for purposes of certification.

At today's meeting, staff will present the PEIR to the Council for certification. Staff will provide presentations on each of the proposed Delta Plan Amendments and identify changes to the proposed amendments that resulted from the environmental review process. After certifying the PEIR, the Council may adopt the DLIS Amendment, CSO Amendment, and PM Amendment, inclusive of direction regarding whether Delta Plan Policy RR P1, as amended, should be a recommendation or continue to be a policy. As part of adopting the proposed Delta Plan Amendments, the Council will need to direct staff to include in the rulemaking adoption of the chosen revisions to Delta Plan Policy RR P1 within the DLIS Amendment as a policy, and amend Policy G P1 (23 CCR section 5002(b)) to clarify that all mitigation measures adopted and incorporated into the Delta Plan apply to covered actions, which will make the new mitigation measure in the PEIR enforceable as to covered actions.

Requested Action

Staff recommends that the Council conduct a public hearing and then adopt the attached Resolution (Attachment 1 to this staff report), through which the Council would:

- (1) Certify the Final Delta Plan Amendments Program Environmental Impact Report (April 2018), adopt the Findings and Statement of Overriding Considerations, adopt and incorporate into the Delta Plan Amendments the new mitigation measure identified in the PEIR, and adopt the Mitigation Monitoring and Reporting Program;
- (2) Adopt the following Delta Plan Amendments included in the Resolution: a) Chapter 7: Delta Levees Investment and Risk Reduction Strategy (DLIS) including Council direction related to whether Delta Plan Policy RR P1, as amended, should be a policy or a recommendation; b) Chapter 3: Conveyance,

Storage and Operations (CSO); and c) amendments to Delta Plan Appendix E for the Performance Measures (PMs);

- (3) Direct Council staff to initiate rulemaking to repeal or revise the regulation in 23 C.C.R. section 5012, Prioritization of State Investments in Delta Levees and Risk Reduction, to amend the regulation in 23 CCR section 5001 to add the new glossary terms, and to amend the regulation in 23 CCR section 5002(b) to clarify that all mitigation measures adopted and incorporated into the Delta Plan apply to covered actions, and to make any technical changes required by the Office of Administrative Law (OAL) in order to achieve any of the forgoing;
- (4) Direct the Executive Officer to correct any errata or complete any non-substantive changes identified by the Council at this meeting, and to finalize all elements of the rulemaking package and submit it to the OAL once complete; and
- (5) Grant the Executive Officer discretion to make changes required by the OAL in order to comply with requirements of the APA, and inform the Council of any such changes.

With regard to item (2) above, staff recommends that the Council update and adopt Policy RR P1 as a regulation incorporating the DLIS Prioritization.

Background

Pursuant to the 2009 Sacramento-San Joaquin Delta Reform Act the Delta Stewardship Council first adopted the Delta Plan in 2013. The Council may revise the Delta Plan as it deems appropriate. (Wat. Code section 85300, subd. (c).) Since 2013, the Council has amended the Delta Plan twice, first in February 2016 to include refined performance measures, and again in September 2016 to exempt single-year water transfers from consideration as covered actions.

At this time, the Council has determined that several components of the Delta Plan require revisions due to changes in circumstances and conditions in the Delta, and based on prior commitments made in the Delta Plan adopted in 2013. The proposed Delta Plan Amendments address three topics: the Delta Levees Investment and Risk Reduction Strategy (DLIS Amendment); Conveyance, Storage, and the Operations of Both (CSO Amendment); and certain Performance Measures (PM Amendment).

Following an extensive public process to develop the text of the proposed Delta Plan Amendments, the Council approved the draft DLIS Amendment, draft CSO Amendment, and draft PM Amendment in concept at its June 22, 2017 meeting, directing staff to use these draft amendments as the project description for purposes of environmental review under CEQA. The Council held over until after certification of the PEIR a decision regarding whether Delta Plan Policy RR P1 should be modified to become a recommendation or retained in the proposed DLIS amendment as a regulation. This

decision does not affect the environmental review of the proposed DLIS Amendment, because the analysis of impacts in the PEIR assumes that the proposed amendments, both policies and recommendations, are implemented and have the desired outcomes. Draft PEIR, Section 5.1.

The Delta Plan Amendments constitute a project under CEQA. CEQA requires the lead agency to evaluate and consider the potential significant adverse environmental consequences of a project before the agency adopts or implements the project. On March 16, 2017, the Council published a Notice of Preparation as the lead agency, identifying that a Program Environmental Impact Report (PEIR) was the appropriate CEQA document for the project.

Council staff has completed preparation and circulation for public review of the PEIR. The PEIR has been prepared in compliance with CEQA (Public Resources Code (Pub. Resources Code) section 21000, et seq.) and the State CEQA Guidelines (California Code of Regulations, title 14, section 15000, et seq.). The PEIR has been prepared pursuant to, and consistent with, the requirements for a Program EIR provided in section 15168 of the State CEQA Guidelines. In developing the PEIR, the Council recognizes the importance of providing full disclosure to the public regarding the potential significant environmental effects of the proposed Delta Plan Amendments. The PEIR is also intended to provide sufficient information to foster informed decision-making by the Council.

The following discussions provide an overview of each proposed Delta Plan Amendment (DLIS, CSO, and PMs) and additional information related to the PEIR for Council consideration prior to taking action to certify the PEIR, adopt the Delta Plan Amendments, and direct staff to proceed with the rulemaking process.

DLIS: Delta Levees Investment and Risk Reduction Strategy – Amendments to Chapter 7: Reduce Risk to People, Property, and State Interests in the Delta

The Delta Reform Act requires that the Delta Plan attempt to reduce risks to people, property, and State interests in the Delta by promoting effective emergency preparedness, appropriate land uses, and strategic levee investments (Water Code section 85305(a)); and that the Delta Plan recommend priorities for State investment in levee operation, maintenance, and improvements in the Delta, including both levees that are a part of the State Plan of Flood Control and nonproject levees (Water Code section 85306). As noted in the Assembly Floor Analysis of SB 1 X7 (Simitian, Chapter 5, Statutes of 2009)¹, the above provisions, coupled with the Council's covered action authority, were intended to "...ensure that levee spending by DWR and the Central Valley Flood Protection Board (CVFPB) reflect [the DLIS] priorities." This desire was further reinforced by the Budget Act of 2017 (AB 97, Chapter 14, Statutes of 2017)²,

¹ http://leginfo.ca.gov/pub/09-10/bill/sen/sb_0001-0050/sbx7_1_cfa_20091104_035148_asm_floor.html

² http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201720180AB97

where the expenditure of funds appropriated for DWR's Delta Levees Programs were required to demonstrate consistency with the March 23, 2017 DLIS prioritization draft.

Current Delta Plan policy RR P1 provides interim priorities for the apportionment of public resources into levees. In addition, current Delta Plan recommendation RR R4: *Actions for the Prioritization of State Investments in Delta Levees* calls for promptly updating the Delta Plan's interim priorities for State investment in Delta levees.

To fulfill these requirements the Council, Council staff, and consultants began developing the DLIS prioritization strategy and the DLIS amendment to the Delta Plan in June 2014. Over the succeeding two and a half years, Council staff conducted more than 40 meetings with technical experts including Delta reclamation district engineers, four public workshops, and 27 webcast Council presentations and discussions of the amendment. The result of this process is the proposed DLIS Amendment to Delta Plan Chapter 7, which is presented as Exhibit 3 to the resolution provided as Attachment 1 to this staff report. A redline version of this amendment is provided as Attachment A-1 to Appendix A of the Final PEIR (see Attachment 2 to this staff report). No changes to the DLIS Amendment are proposed at this time resulting from responses to comments received on the Draft PEIR.

The objectives of the proposed amendment are to prioritize investment in levees to: (1) ensure that the limited public funds available are expended first for improvements that are most critical to protect lives, property, and State interests; and (2) protect State interests. Both objectives are to be achieved in a manner consistent with the following principles:

1. Better protect life, property, and the State's coequal goals for the Delta
2. Do not use State funding to assist further urbanization of flood-prone Delta land.
3. Expend funds that reduce risk
4. Prioritize investments that protect urban areas first
5. Prioritize investments that protect water conveyance and diversion infrastructure
6. Prioritize investments in ecosystem enhancements that provide high benefits
7. Consider system-wide needs—consider specific recommendations of the Delta Plan and State Plan of Flood Control
8. Take into account the Delta's unique values, including the Delta's farmlands, historic communities, and natural and cultural resources
9. Consider post-flood recovery response by local, State, and federal agencies and the efficacy and likelihood of financial assistance after flood damage

In addition to the outreach conducted as the DLIS amendment was developed, there was extensive collaboration between the Council, the CVFPB, and DWR has also

occurred. The scope of these interactions included a joint CVFPB-Council public meeting in August 2016, as well as a number of regularly occurring meetings where a subset of Council members, CVFPB members, and DWR and Council executives met to discuss DLIS. This collaboration resulted in a Memorandum of Understanding (MOU) that was approved by the Council on June 22, 2017, and signed by all parties in September 2017.

Council, DWR, and CVFPB staff started weekly meetings in November 2017 to begin developing implementation and management strategies to advance the objectives outlined in the MOU. While significant work remains, this working group has made important progress to date toward implementing the goals and objectives outlined in the MOU, including the following accomplishments:

- A commitment to jointly manage and maintain the DLIS Tool.
- A methodology for incorporating the current and future prioritization into the Delta Levees Special Projects project selection process.
- A framework for reporting and tracking agency accomplishments and activities.
- Progress toward the development of an Ability-to-Pay methodology that the Department could use to fulfill its statutory requirement.

The progress made to date through this workgroup was presented to the Council at its March 23, 2018 meeting.

Options Regarding Delta Plan Policy RR P1

The original draft DLIS Amendment endorsed at the March 23, 2017 Council meeting proposed the prioritization criteria as a (regulatory) policy. At the June 22, 2017 Council meeting, the proposed draft DLIS Amendment was modified to allow Policy RR P1 *Prioritization of State Investments in Delta Levees and Risk Reduction* to be considered for final action as either a recommendation or as a regulation following certification of the PEIR.

As part of today's action item, the Council should provide direction whether to proceed with Policy RR P1 as a recommendation or as a regulation. Opportunities and challenges associated with each option are provided below for Council consideration. Under either option, the MOU workgroup would continue to implement near-term priorities and develop management plans for longer range goals.

Option 1: Adopt the DLIS Prioritization as a Recommendation

The Council, DWR, and the CVFPB entered into the MOU to establish a formal working relationship to administer current plans and policies regarding State investments in levee operation, maintenance, and improvements, and to implement future amendments to the Delta Plan regarding State levee investments, including the proposed Delta Plan DLIS amendment. The MOU was the product of a good faith effort

to establish a productive relationship that recognizes various agencies' authorities, responsibilities, and roles in managing State risks in the Delta.

While changing Policy RR P1 to a recommendation does have benefits, the Council would be relinquishing its regulatory authority to ensure that state investments in Delta levee improvements are consistent with the priorities developed under the DLIS. Under Option 1, Council staff would initiate the OAL process to remove the current version of RR P1 from the California Code of Regulations.

Option 1 Opportunity:

- Ease in updating: as a recommendation, the prioritization can quickly adapt to changing conditions and State priorities, without triggering Office of Administrative Law review. Changes may require environmental review, although the level of review would be determined at the time such changes are proposed.

Option 1 Challenges:

- Relies on the willing participation of signatories to the MOU and their ongoing commitment of staff resources to implementing the Delta Plan's priorities.
- The Council would be giving up some regulatory authority. The existing RR P1 is currently a regulation, albeit an interim one; this option would delete the interim regulation and reduce the revised RR P1 to a recommendation.
- Future updates or changes to the prioritization could require a Delta Plan Amendment.

Option 2: Update and Adopt Policy RR P1 as a Regulation Incorporating the DLIS Prioritization

Updating Policy RR P1 to include the DLIS rankings would formalize the prioritization as a regulation. This would strengthen the influence of the Council in levee funding decisions, clearly demonstrating our commitment to following the Legislature's intention by requiring that state-funded improvements to Delta levees demonstrate consistency with the Delta Plan.

Under Option 2, Council staff would initiate the OAL process to update the current version of RR P1 in the California Code of Regulations (23 Cal. Code Regs. § 5012) to add the levee funding priorities developed through the DLIS process and adopted in the Chapter 7 amendment. Staff would also initiate the OAL process to amend the regulation in 23 CCR section 5001 to add the new glossary terms defined in proposed RR P1.

Option 2 Opportunities:

- Legally enforceable through established Delta Plan consistency certification process.
- Provides greater accountability for compliance with prioritization, while allowing deviation from the prioritization when accompanied by substantial written

justification from DWR that would be subject to the Council's agreement upon appeal.

Option 2 Challenge:

- Future updates or changes to the prioritization could require both a Delta Plan Amendment and a regulatory amendment, along with necessary environmental review.

Staff Recommendation Regarding Delta Plan Policy RR P1

After considering the opportunities and challenges highlighted above for each approach, staff recommends *Option 2: Update and Adopt Policy RR P1 as a Regulation Incorporating the DLIS Prioritization*.

CSO: Conveyance, Storage, and the Operations of Both – Amendments to Chapter 3: A More Reliable Water Supply for California

The Delta Plan was completed in 2013 in accordance with Water Code section 85304 to promote options for improved conveyance in the Delta. Delta Plan recommendation WR R12 recommended that State and federal agencies complete the Bay Delta Conservation Plan (BDCP) and receive incidental take permits by December 31, 2014. Had that recommendation been fulfilled, the BDCP's conveyance provisions would have been incorporated automatically into the Delta Plan pursuant to Water Code section 85320(a). Appendix A of the Delta Plan, which describes the Council's role in the BDCP, provides in part that, "should the BDCP process not be completed by January 1, 2016, the Council intends to revisit the issue of conveyance to determine how to facilitate improved conveyance facilities without the BDCP."

In 2015, the State announced a new conveyance approach that would not complete the BDCP as a Natural Community Conservation Plan and Habitat Conservation Plan, but instead would pursue conveyance facilities through an initiative called California WaterFix. A parallel effort called California EcoRestore was concurrently proposed to accelerate implementation of a suite of habitat restoration actions in the Delta.

The Council promptly began to review the issue of conveyance as well as storage and operations as provided for in Water Code section 85304. Over the course of 2015, the Council proceeded with the process for development of an amendment to the Delta Plan to promote options for conveyance, storage systems and the operation of both. The first actions were the development by the Council of guiding principles to provide direction to staff related to a CSO amendment. The Council held numerous public meetings which included subject matter experts and stakeholder panelists to inform the development of the guiding principles. At the November 2015 Council meeting, the Council adopted a problem statement and the *19 Principles for Water Conveyance in the Delta, Storage Systems, and for the Operation of Both to Achieve the Coequal*

Goals (19 Principles). The 19 Principles set the direction for development of the draft CSO Amendment.

Throughout 2016, the Council discussed and provided guidance and direction to staff regarding the scope and content of the CSO Amendment at its March, June, and September meetings. These meetings included briefings from Department of Water Resources (DWR) staff on the status of surface water storage studies, DWR's System Reoperation Program, and results of DWR's System Reoperation Analysis; and briefings from California Water Commission (CWC) staff regarding available grant funds under the Water Storage Investment Program.

At the February 23, 2017 Council meeting, Council staff presented an initial discussion draft CSO Amendment to the Council. Three public workshops were held across the state in March 2017, providing additional opportunities for public comment. The Council also received comment letters from numerous members of the public, organizations, and public agencies. These comments were summarized at the March 23, 2017 Council meeting.

At the April 28, 2017 and May 25, 2017 Council meetings, staff presented sequential revised CSO Amendment discussion drafts incorporating Council and public comments. At the May meeting, the Council heard from two panels: one composed of three scientists regarding the science supporting the proposed amendment, the other composed of various practitioners in Delta issues examining the effects of the proposed CSO Amendment. At the June 22, 2017 Council meeting, the Council approved in concept the draft CSO Amendment, directing staff to use the draft amendment as the project description for purposes of environmental review under CEQA. The Delta Independent Science Board (DISB) was then charged to review the draft CSO amendment and provide comments.

The result of this three-year process is the proposed CSO Amendment to Delta Plan Chapter 3. The proposed changes include replacing Delta Plan recommendation WR R12 *Complete Bay Delta Conservation Plan* with a series of proposed recommendations that promote options for water conveyance, storage systems, and the operation of both. These recommendations contain a suite of actions to be collectively pursued in an integrated manner with existing Delta Plan policies and recommendations. They include the following:

- WR R12a *Promote Options for New and Improved Infrastructure Related to Water Conveyance*
- WR R12b *Evaluate, Design, and Implement New or Improved Conveyance or Diversion Facilities in the Delta*
- WR R12c *Improve or Modify Through-Delta Conveyance*
- WR R12d *Promote Options for New or Expanded Water Storage*
- WR R12e *Design, Construct and Implement New or Expanded Surface Water Storage*
- WR R12f *Implement New or Expanded Groundwater Storage*

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- WR R12g *Promote Options for Operations of Storage and Conveyance Facilities*
- WR R12h *Operate Delta Water Management Facilities Using Adaptive Management Principles*
- WR R12i *Update the Bay-Delta Plan and Consider Drought*
- WR R12j *Operate New or Improved Conveyance Facilities Outside of the Delta*
- WR R12k *Promote Water Operations Monitoring, Data Management, and Data Transparency*

Staff has made a number of non-substantive revisions to the draft CSO Amendment since the June 22, 2017 Council meeting. These revisions align with responses to comments from the DISB review and public comments received through the PEIR process. Following is a summary of those non-substantive edits (additions are presented in *italics* and deletions are presented in ~~*italics and strikethrough*~~):

- Various typographical corrections
- Additional bibliographic citations
- Edits for stronger or lesser emphasis, such as:
 - Page 5, lines 22 and 23, "...adaptive management consistent with the framework outlined in the Delta Plan is ~~*critical*~~ *essential* for all actions..."
 - Page 8, line 8, "...species have declined ~~*drastically*~~ since the construction of State and federal water systems..."
 - Page 11, lines 13 and 14, "...urban conservation is likely to *substantially* offset ~~*some*~~ demand increases..." Without new or expanded storage, current conflicts between the use of water for ecosystem management (flow and temperature), water quality (for in-Delta use and exporters), and supply reliability ~~*could will only*~~ intensify."
- Edits for clarification, such as:
 - Page 7 lines 27 and 28, "Recent events, *including damages sustained at the Oroville Dam flood control spillway and at the Clifton Court Forebay intake structure during 2017...*"
 - Page 13, lines 17 through 19, "...diversification of water supply portfolios at the regional and local levels, ~~*which will provide greater*~~ *can improve* overall supply reliability *through providing alternative sources of supply...*"
 - Page 18, lines 26 and 27, "~~*New*~~ *More natural* flow patterns linked with *connections to improved* habitat ~~*restoration*~~ areas can create opportunities to re-establish important ecological processes..."
- Non-substantive edit from PEIR comments

- CSO Amendment of Chapter 3, Policies and Recommendations section, Improved Conveyance and Expand Storage, Problem Statement, “The state’s interconnected network of surface and groundwater storage is insufficient in volume, conveyance capacity, and flexibility to achieve the coequal goals. The ~~completion of the BDCP and the~~ implementation of major new *Delta conveyance improvements* and surface and groundwater storage facilities are needed but may take many years to implement, which will require more near-term actions to improve Delta operations and reduce the state’s vulnerability to potential disruptions in water exports from the Delta due to floods and earthquakes or the need for additional regulatory protections for the environment.”

The proposed CSO Amendment to Delta Plan Chapter 3 is presented as Exhibit 4 to the resolution provided as Attachment 1 to this staff report. A redline version of this amendment is provided as Attachment A-3 to Appendix A of the Final PEIR (see Attachment 2 to this staff report).

PMs: Performance Measures – Amendments to Appendix E of the Delta Plan

The Delta Reform Act of 2009 requires the Delta Plan to include performance measures that enable the Council to measure progress in meeting the plan objectives. These performance measures are to be based on the best available scientific information, and include quantitative or other “measurable assessments of the status and trends” of the health of the Delta, as well as the reliability of the state’s water supply exported from the Sacramento and San Joaquin river watersheds (Water Code sections 85211 and 85308).

The Delta Plan adopted by the Council in May 2013 included an initial suite of performance measures organized and presented by corresponding Delta Plan goals and strategies. Following the 2013 adoption, Council staff conducted an assessment and refinement of the performance measures, culminating in February 2016 with Council approval of refined output and outcome performance measures. This action relocated and consolidated all performance measures within Delta Plan Appendix E. It also defined three types of performance measures: *administrative* performance measures used to track various actions recommended by the Delta Plan; *output* performance measures used to track results of administrative actions; and *outcome* measures for tracking the impacts of those actions.

Since the Council’s amendment of Appendix E of the Delta Plan in 2016, staff has continued to evaluate and consider further refinement of the output and outcome performance measures as a result of public comment, external expert review, Delta Lead Scientist and Delta Science Program input, emerging science, as well as input from the Council, including the following:

- Request for Delta ISB Review – In January 2017, Council staff requested that the Delta ISB perform an in-depth review of a subset of high-priority output/outcome performance measures. The Delta ISB suggested that it would be more appropriate for local subject matter experts to provide a more robust review of the performance measures.
- External Subject Matter Expert Review of High Priority Performance Measures – Based on the Delta ISB's recommendations, external subject matter experts reviewed a subset of high-priority performance measures in February and March 2017.
- Public Workshop – A public workshop was held on March 9, 2017 to review proposed changes to the performance measures and to solicit input from stakeholders and the public. Interested members of the public were given options to provide comments through email, an online forum tool, in person, and in writing.
- Data Sheets – Following adoption, staff completed detailed data sheets for each performance measure. Each data sheet details all aspects of a performance measure including the data sources, assessment methodology, and key references.

On June 22, 2017, the Council approved the draft PM Amendment in concept, directing staff to use this draft amendment as the project description for purposes of environmental review under CEQA. Staff has also made a number of non-substantive revisions to the draft PM Amendment since the June 22, 2017 Council meeting. These revisions align with responses to public comments received through the PEIR process. Following is a summary of those non-substantive edits:

- PM 4.2 Sub-measure - *Peak Flows*
 - Add location details to the metrics and target (Bend Bridge on the Sacramento River).
- PM 4.2 Sub-measure - *More Gradual Recession Flow at the End of the Wet Season*
 - Add location details to the metrics and target (Bend Bridge on the Sacramento River).
- PM 6.9: *Measurable Toxicity*
 - Add clarifying language to the target.

In addition, the following non-substantive technical edits have been made to the PM data sheets. These include edits that are based on the PEIR analysis and responses to public comments received, as well as clarifying edits completed by Council staff.

- Data sheet PM 3.4: *Water Supply Reliability*:

- Expand discussion and citations regarding tracking information available in Urban Water Management Plans.
- Data Sheet PM 4.2 Sub-measure – *In-Delta Flows*:
 - Clarifying non-substantive edits regarding increase in ratio of Delta outflows to Delta inflows.
 - Clarifying non-substantive edits and expanded discussion regarding outflow to inflow ratios.
- Data sheet PM 4.2 Sub-measure – *More Gradual Recession Flows at the End of the Wet Season*:
 - Clarify Bend Bridge measurement site.
 - Expand discussion regarding daily recession rate, with citations.
- Data sheet PM 4.2 Sub-measure – *Peak Flows*:
 - Clarify Bend Bridge measurement site.
- Data sheet PM 4.2 Sub-measure - *Restoring More Natural Functional Flow Patterns in the Yolo Bypass*:
 - Acknowledge other floodplain habitats that can provide ecological benefits to the Delta (Cosumnes River floodplain, Sutter Bypass, Natomas East Main Drainage Canal).
 - Expand discussion on uncertainties between inundation targets, time period and frequency of inundation to target species and key ecological functions.
 - Expand discussion on estimation of variability in fish access to the Yolo Bypass in relation to flow and water temperature.
 - Discuss need for alignment with relevant ongoing collaborative and adaptive management processes.
 - Add reference to the Independent Review Panel Final Report of Yolo Bypass Salmon Habitat Restoration and Fish Passage Analytical Tool.
- Data sheet PM 6.2: *Salinity*
 - Add additional references on scientific uncertainty in relating fall salinity to benefit Delta smelt (including importance of Delta smelt year-round freshwater residence upstream from location of X2, and correlation in winter and spring salinity to Delta smelt density and variability in Delta smelt presence).
- Data sheet PM 6.4: *Protect Groundwater Beneficial Uses*
 - Add alignment with Central Valley Salinity Alternatives for Long Term Sustainability (CV-SALTS) efforts, and reference to the CV-SALTS 2016 Management Plan.

- Data Sheet PM 6.7: *Critical Pesticides*
 - Add a note that management of legacy pesticides and related problems is challenging and may not result in delisting by 2013 targets.
- Data Sheet PM 6.9: *Measurable Toxicity*
 - Add clarifying language to the text of the data sheet that the toxicity sediment is measured in sediment samples.
- Data Sheet PM 6.10: *Harmful Algal Blooms*
 - Add additional discussion on principal factors regulating growth of the cyanobacteria including flow.
 - Include in the reference section the 2018 Delta Nutrient Research Plan, by the Central Valley Regional Water Quality Control Plan.

Additional Legal Clarifications to the Draft Performance Measure Amendment

The following non-substantive edits were made at the direction of Council Legal staff to clarify the applicability of the performance measures. These performance measures refer to actions and information submitted through urban water management plans, which by statutory and regulatory definition are submitted only by urban water suppliers (a defined term in the Water Code and Delta Plan regulations).

- PM 3.1: *Urban Water Use*
 - Delete references to “water contractors” and “contractors” as legally unnecessary and potentially confusing. Performance Measure refers to actions and information submitted through urban water management plans, which are submitted only by urban water suppliers (a defined term in the Water Code and in the Delta Plan regulations). Added qualifier that the performance measure applies to water suppliers located within the Delta or who use water from the Delta.
- PM 3.2: *Alternative Sources of Supply*
 - Delete references to “water contractors” and “contractors” as legally unnecessary and potentially confusing. Performance Measure refers to actions and information submitted through urban water management plans, which are submitted only by urban water suppliers (a defined term in the Water Code and in the Delta Plan regulations). Added qualifier that the performance measure applies to water suppliers located within the Delta or who use water from the Delta
- PM 3.4: *Water Supply Reliability*
 - Delete references to “water contractors” and “contractors” as legally unnecessary and potentially confusing. Performance Measure refers to

actions and information submitted through urban water management plans, which are submitted only by urban water suppliers (a defined term in the Water Code and in the Delta Plan regulations). Added qualifier that the performance measure applies to water suppliers located within the Delta or who use water from the Delta

- Data sheet PM 3.1: *Urban Water Use*
 - Strike references to “contractors/diverters” as conforming change to PM 3.1.
- Data sheet PM 3.2: *Alternative Sources of Supply*
 - Strike references to “water contractors” as conforming change to PM 3.2.
- Data sheet PM 3.4: *Water Supply Reliability*
 - Strike references to “water contractors” as conforming change to PM 3.4.

The proposed PM Amendment language, including all edits shown here is presented within the resolution provided as Exhibit 5 to the resolution provided as Attachment 1 to this staff report. A redline version of the amended PM Amendment language is provided as Attachment A-4 to Appendix A of the Final PEIR (see Attachment 2 to this staff report). A redline version of the amended PM data sheets is provided as Attachment A-5 to Appendix A of the Final PEIR (see Attachment 2 to this staff report).

Program Environmental Impact Report

In order to analyze the significant environmental effects (significant impacts) of the three proposed Delta Plan Amendments, Council staff and consultants have prepared a PEIR to satisfy the requirements of CEQA and the State CEQA Guidelines. A Notice of Preparation of a PEIR was issued by the Council on March 16, 2017. On March 24, 2017, the Council held a public scoping meeting to solicit the views of public agencies and the public on the scope and content of the PEIR.

The PEIR consists of two parts: a Draft PEIR and a Final PEIR, each with appendices. The Draft PEIR describes the Delta Plan Amendments; describes the general types of activities and potential projects by other agencies that could result from the Delta Plan Amendments; describes typical construction activities and methods likely to be used as part of those activities and projects; analyzes a range of potential significant impacts of the Delta Plan Amendments; identifies mitigation measures to reduce significant project-level and cumulative impacts; and considers alternatives to the Delta Plan Amendments that would reduce identified significant environmental effects.

The different levels of impacts identified in a PEIR are as follows:

- Significant and unavoidable
- Significant that can be mitigated
- Less than significant

- No impact

The 2013 Program EIR Mitigation Measures, which were adopted and incorporated into the Delta Plan in 2013 in order to reduce or avoid the significant environmental impacts of the Delta Plan would continue to apply to covered actions as part of the Delta Plan Amendments and the Delta Plan as a whole. Implementation and enforcement would be within the responsibility and jurisdiction of public agencies, other than the Council, that propose to approve or implement covered actions.

For covered actions, other public agencies would be required to implement all applicable mitigation measures that have been adopted and incorporated into the Delta Plan or equally effective measures, if feasible, as required by Delta Plan policy GP 1(b)(2) (adopted at Cal. Code Regs., tit. 23, § 5002, subd. (b)(2)). However, as adopted, GP 1(b)(2) applies only to mitigation measures identified in the 2013 Delta Plan Program EIR. The current PEIR includes a new mitigation measure, Mitigation Measure 5.2-1, which is not identified in the 2013 Delta Plan Program EIR. CEQA requires that all adopted mitigation measures must be enforceable. If the Council certifies the PEIR, GP 1(b)(2) and the accompanying regulation must be revised to incorporate the new mitigation measure. Staff recommends that the Council revise GP 1(b)(2) and Cal. Code Regs., tit. 23, § 5002, subd. (b)(2) as follows:

“(2) Covered actions not exempt from CEQA must include all applicable feasible mitigation measures adopted and incorporated into the Delta Plan identified in the Delta Plan’s Program EIR (unless the measure(s) are within the exclusive jurisdiction of an agency other than the agency that files the certification of consistency), or substitute mitigation measures that the agency that files the certification of consistency finds are equally or more effective.”

This will make PEIR Mitigation Measure 5.2-1 and any future mitigation measures adopted and incorporated into the Delta Plan enforceable as to covered actions. Implementation and enforcement of any mitigation measures other than the mitigation measures adopted and incorporated into the Delta Plan would be within the responsibility and jurisdiction of public agencies other than the Council. For non-covered actions, the Council lacks authority to require other agencies to adopt or enforce mitigation measures. However, agencies can and should adopt all applicable mitigation measures as part of their approval of actions taken in response to the Delta Plan Amendments.

Project-level impacts would be addressed in future site-specific environmental analysis conducted by lead agencies at the time such facilities or actions are proposed. In many cases, adoption of mitigation measures adopted or incorporated into the Delta Plan, or equally effective measures, would reduce identified impacts identified in the PEIR to a less-than-significant level. However, the specific locations, scale, and timing of possible future facilities are not known, and it is not possible to conclude that mitigation measures adopted and incorporated into the Delta Plan, or feasible equally effective

measures, would reduce significant impacts to less-than-significant in all cases. Furthermore, implementation and enforcement of mitigation measures adopted and incorporated into the Delta Plan, or equally effective measures, would be within the responsibility and jurisdiction of public agencies other than the Council.

For these reasons, the Draft PEIR identifies impacts in the following topic areas as significant and unavoidable:

- Aesthetics
- Agriculture and Forestry Resources
- Air Quality and Greenhouse Gas Emissions
- Biological Resources – Aquatic
- Biological Resources – Terrestrial
- Cultural and Paleontological Resources
- Geology, Soils, Seismicity, and Mineral Resources
- Hazards and Hazardous Materials
- Hydrology and Water Quality
- Land Use and Planning
- Noise
- Recreation
- Transportation, Traffic, and Circulation
- Tribal Cultural Resources
- Utilities and Public Services

The Draft PEIR also identifies and evaluates a reasonable range of alternatives to the proposed Delta Plan Amendments. Council staff and consultants screened potential alternatives for analysis in the PEIR based on the ability of alternatives to attain most of the basic project objectives, feasibility within the limits of the Delta Reform Act, and ability to reduce or eliminate any significant environmental impacts of the proposed Delta Plan Amendments. The alternatives analyzed in the PEIR are the following:

- No Project Alternative: The Council would not amend the Delta Plan; the existing Delta Plan would continue to be in effect. Projects initiated by other public agencies in response to the Delta Plan would continue to be implemented, and would continue to be subject to the Council's process for consistency determination.
- Alternative 1 –Reduced Reliance on the Delta Emphasis: Less investment in conveyance facilities in the Delta (improvements to existing through-Delta conveyance only). Would not include new or expanded storage north of the Delta.
- Alternative 2 –Delta Wetland Restoration Emphasis: Includes State investments in Delta levees improvement focused on projects that provide ecosystem benefits, does not include construction of some types of new conveyance facilities in the Delta, and includes some revised performance measures.

- Alternative 3 –Through-Delta Conveyance Emphasis: Does not promote construction and operation of new isolated conveyance facilities in the Delta. Includes modifications to existing conveyance infrastructure, and development of additional groundwater and surface water storage.

The alternatives that were considered but rejected for further analysis are discussed in Draft PEIR Section 9.2.3.

The Draft PEIR was published on November 1, 2017 and a Notice of Availability was sent to local, State, and federal agencies and to organizations and individuals who wanted to review and comment on the adequacy of the analysis included in the Draft PEIR. More than 3,600 individuals, agencies, and organizations were informed by e-mail or mail of the availability of the Draft PEIR. The public comment period for the Draft PEIR began on November 1, 2017 and ended on January 22, 2018. During that 82-day public comment period, the Council held two open houses to facilitate public review of the Draft PEIR, on November 1, 2017 and November 2, 2017 in Stockton and Sacramento, respectively. A public meeting was held during the comment period in order to receive comments on the Draft PEIR on December 14, 2017 in West Sacramento.

Written comments from the public and public agencies were accepted throughout the public comment period. At the end of the public comment period for the Draft PEIR, a total of 535 comment letters and e-mails were received (including 492 form letters). Three of the comment letters were from State agencies, 12 were from local agencies, and eight were from organizations. The remaining comment letters were submitted by individuals.

After review and evaluation of the comments received on the Draft Program Environmental Impact Report (PEIR), Council staff determined that some comments by different commenters were substantially similar in subject matter. In response to these frequently raised comments, “master responses” have been prepared to avoid repetition of responses and lengthy duplication of text. These master responses are provided in Chapter 3 of the Final PEIR to address common themes and issues repeated in the comments. The master responses address the following general topics:

1. Delta Conveyance, Storage System, and the Operation of Both (CSO) Amendment
 - Development of the CSO Amendment
 - CSO Amendment and Water Rights
 - Project Objectives
 - Relationship to California WaterFix
2. Delta Levee Investment and Risk Reduction Strategy (DLIS) Amendment
 - Development of the DLIS Amendment

3. Performance Measures (PM) Amendment
 - Development of the PM Amendment
 - Project Objectives
4. Approach to the Environmental Analysis
 - Program vs. Project-level Environmental Review
 - Use of Example Projects
 - Determining Impact Significance and Recommending Mitigation Measures for Covered and Non-covered Actions (including incorporation of 2013 PEIR mitigation measures and responsibility for implementing mitigation measures)
 - Use of Water Operations Modeling
 - Use of Best Available Science and Best Available Information
 - Environmental Justice and Human Right to Water
5. Alternatives Evaluated in the Draft PEIR
 - Range of Alternatives
 - Alternatives Screening
 - Project Alternatives
 - Comparison and Analysis of Alternatives
 - Determination of the Environmentally Superior Alternative
6. Authority of the Delta Stewardship Council and Legal Status of the Delta Plan
 - Coequal Goals
 - Covered Actions
 - Consistency Review, Certification of Consistency, and Appeals
 - Status of Delta Plan and Delta Plan Litigation

In addition to these master responses, Council staff and consultants prepared written responses to each comment that raises an environmental issue.

The Final PEIR consists of an introduction, revisions to the Draft PEIR made in response to comments and Council staff review, written responses to comments (including a list of commenters on the Draft PEIR), a list of additional references new to the preparation of the Final PEIR, and appendices, which include revised PM data sheets and form letters submitted on the Draft PEIR. The Final PEIR was released to

the public and responses to comments received from public agencies were sent to each commenting public agency via certified mail on April 16, 2018.

Requirements for PEIR Certification and Future Steps in Project Approval

Before the Council makes a decision with regard to the proposed Delta Plan Amendments, State CEQA Guidelines section 15090(a) requires that the Council first certify that the PEIR has been completed in compliance with CEQA, that the Council has reviewed and considered the information in the PEIR, and that the PEIR reflects the independent judgment and analysis of the Council.

A Mitigation Monitoring and Reporting Program (MMRP) is required by CEQA to ensure implementation of the mitigation measures. An MMRP identifies each mitigation measure that has been adopted, the party responsible for implementation, the monitoring schedule, and who will perform the monitoring functions. Given that the Council will not be proposing projects to implement the Delta Plan, the Council's monitoring role will be carried out through the covered action certification of consistency process and 23 CCR § 5002(b)(2).

Pursuant to State CEQA Guidelines section 15091, a lead agency may only approve or carry out a project for which an EIR has been prepared that identifies one or more significant environmental effects if it makes one or more of the following findings (State CEQA Guidelines section 15091(a)):

- (1) Changes or alterations have been required in, or incorporated into, the project which avoid or substantially lessen the significant environmental effects as identified in the final EIR.
- (2) Such changes or alterations are within the responsibility and jurisdiction of another public agency and not the agency making the finding. Such changes have been adopted by such other agency or can and should be adopted by such other agency.
- (3) Specific economic, legal, social, technological, or other considerations, including provision of employment opportunities for highly trained workers, make infeasible the mitigation measures or project alternatives identified in the final EIR.

Accordingly, if the Council approves the Delta Plan Amendments, it must adopt appropriate findings as set forth in State CEQA Guidelines section 15091. Because the Delta Plan Amendments would result in the significant and unavoidable impacts described above, as part of the findings the Council must also adopt a Statement of Overriding Considerations (SOC), which explains why the benefits of the proposed project outweigh its unavoidable significant environmental effects.

The proposed CEQA findings, SOC, and MMRP for the Delta Plan Amendments project are presented as Exhibits 1 and 2 to the resolution provided as Attachment 1 to this

staff report. Should the Council adopt the proposed amendments, Council staff will file the required Notice of Determination with the State Clearinghouse and County clerks.

Summary

Council staff finds that the PEIR meets the requirements of CEQA. certify that the PEIR was prepared in accordance with CEQA and the State CEQA Guidelines, adopt the Findings of and Statement of Overriding Considerations, adopt and incorporate into the Delta Plan Amendments all of the new mitigation measures identified in the PEIR, adopt the MMRP, and adopt the Delta Plan Amendments.

Staff Recommended Action

Today, staff is recommending that the Council receive public comments and then adopt the attached Resolution (Attachment 1), through which the Council would:

- (1) Certify the Final Delta Plan Amendments Program Environmental Impact Report (April 2018), adopt the Findings and Statement of Overriding Considerations, adopt and incorporate into the Delta Plan Amendments the new mitigation measure identified in the PEIR, and adopt the Mitigation Monitoring and Reporting Program;
- (2) Adopt the following Delta Plan Amendments included in the Resolution: a) Chapter 7: Delta Levees Investment and Risk Reduction Strategy (DLIS) including Council direction related to whether Delta Plan Policy RR P1, as amended, should be a policy or recommendation; b) Chapter 3: Conveyance, Storage and Operations (CSO); and c) amendments to Delta Plan Appendix E for the Performance Measures (PMs);
- (3) Direct Council staff to initiate rulemaking to repeal or revise the regulation in 23 C.C.R. section 5012, Prioritization of State Investments in Delta Levees and Risk Reduction, to amend the regulation in 23 CCR section 5001 to add the new glossary terms, and to amend the regulation in 23 CCR section 5002(b) to clarify that all mitigation measures adopted and incorporated into the Delta Plan apply to covered actions, and to make any technical changes required by the Office of Administrative Law in order to achieve any of the forgoing;
- (4) Direct the Executive Officer to correct any errata or complete any non-substantive changes identified by the Council at this meeting, and to finalize all elements of the rulemaking package and submit it to the Office of Administrative Law (OAL) once complete; and
- (5) Grant the Executive Officer discretion to make changes required by the OAL in order to comply with requirements of the APA, and inform the Council of any such changes.

With regard to item (2) above, staff recommends that the Council update and adopt Policy RR P1 as a regulation incorporating the DLIS Prioritization.

Staff recommends that, after receiving the report on this matter, the Council receive public comments, then after deliberation, take the following action: Adopt Resolution – *“Resolution 2018-### Certification of the Delta Plan Amendments Program Environmental Impact Report; Adoption of Findings and a Statement of Overriding Considerations, Mitigation Measures, and a Mitigation Monitoring and Reporting Program; and Adoption of the Delta Plan Amendments”* (Attachment 1)

Fiscal Information

None

List of Attachments

- Attachment 1: Resolution 2018-### Certification of the Delta Plan Amendments Program Environmental Impact Report; Adoption of Findings and a Statement of Overriding Considerations, Mitigation Measures, and a Mitigation Monitoring and Reporting Program; and Adoption of the Delta Plan Amendments
- Attachment 2: Final Delta Plan Amendments Program Environmental Impact Report
- Appendix A: Revisions to Text of Proposed Delta Plan Amendments
 - Appendix B: Attachments and Exhibits Submitted with Comment Letters
 - Appendix C: Form Letter Submitters

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